

UT 96-7

Tax Type: USE TAX

Issue: Pollution Control Equipment (Exemption)
Coal Mining Equipment (Exemption)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	
v.)	Docket #
)	
TAXPAYER)	IBT #
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES

Jeffrey Naeger for TAXPAYER.

SYNOPSIS

This cause came on to be heard following a Use Tax audit performed upon TAXPAYER (hereinafter "taxpayer") by the Illinois Department of Revenue (hereinafter the "Department") for the period of July 1, 1991 through December 31, 1992. After completion of her audit work, the auditor and her supervisor reviewed the audit findings with a representative of taxpayer who indicated his disagreement with a portion of them. Some items were agreed to and are not part of this proceeding. Taxpayer primarily disagrees with the Department's assessment of its purchase of various equipment parts known as flights.

This is the contested issue herein and the reason for taxpayer's disagreement and protest is its belief the items qualify for the coal mining equipment exemption.

After reviewing this matter, I recommend the issue be resolved partly in favor of the taxpayer and partly in favor of the Department.

FINDINGS OF FACT

1. Taxpayer conducted business operations in Illinois during the audit period by mining and processing coal. (Tr. pp. 7-9; Dept. Ex. No. 3)

2. Taxpayer used flights on their preparation plant rotating centrifugal dryers and these dryers remove moisture from the coal in a manner similar to a spin dryer on a washing machine. (Tr. pp. 9-10; Taxpayer Ex. Nos. 1 and 2)

3. The main purpose of the preparation plant rotating centrifugal dryers is to remove moisture from the coal so it reaches a moisture content less than 10%. (Tr. p. 30; Taxpayer Ex. No. 1)

4. The taxpayer has introduced documentary evidence showing that except for two unlocatable invoices, all the remaining contested items assessed by the Department are flights purchased by taxpayer for use on its centrifugal dryers. (Tr. pp. 44-45; Taxpayer Ex. Nos. 1 and 2)

5. The flights purchased by taxpayer for use on its centrifugal dryers were sold by the vendors in units of eight, and all these unit purchase prices exceeded \$250.00. (Tr. pp. 24-26; Dept. Ex. No. 2, pp. 6 and 7; Taxpayer Ex. No. 1, pp. 6-86)

6. Taxpayer introduced no documentary evidence to support its contention that the invoices assessed by the Department dated 7/18/91 and 12/31/91 were for flights for use on its centrifugal dryers. (Tr. pp. 3, 16-17; Dept. Ex. No. 2, pp. 6-7)

7. Pursuant to statutory authority, the auditor did cause to be issued an Audit Correction and/or Determination of Tax Due (SC-10-G) and this served as the basis for Notice of Tax Liability (NTL) No. XXXXX issued December 27, 1994 for \$40,032, inclusive of tax, penalty and interest. (Dept. Ex. Nos. 1 and 3)

8. Pursuant to prehearing proceedings, the auditor did cause to be issued an adjusted Audit Summary Analysis of Tax Liability and this revised the additional tax due to \$7,408.00. The taxpayer then agreed it was liable for

\$4,430.00 of this amount, leaving \$2,978.00 in controversy in this proceeding.

(Dept. Ex. No. 2)

9. The introduction of the Department's corrected return, adjusted tax liability summary schedule, and NTL into evidence established its *prima facie* case. (Tr. p. 3; Dept. Ex. Nos. 1-3)

CONCLUSIONS OF LAW

Section 2 of the Retailers' Occupation Tax Act (35 ILCS 120/2) imposes a tax upon persons engaged in the business of selling tangible personal property at retail. Section 2-5 of the Act provides an exemption for:

(21) "Coal exploration, mining, offhighway hauling, processing, maintenance, and reclamation equipment costing \$250 or more, including replacement parts and equipment costing \$250 or more,"

The Illinois Use Tax Act which imposes a tax upon the privilege of using tangible personal property in Illinois (35 ILCS 105/1 et seq.) contains a similar exemption provision in Section 3-5 (35 ILCS 105/3-5 (16)). The fundamental question in this proceeding is if the assessed items qualify under the cited exemption. For the following reasons, I find the transactions at issue qualify for exemption, except for two.

Because the flight parts at issue herein are used on the rotating centrifugal dryers in the coal cleaning and drying processes prior to sale of the coal to customers, they would qualify for exemption if they meet the statutory requirement of costing \$250.00 or more. 86 *Admin. Code* ch. I, Sec. 130.350.

The evidence shows that taxpayer could only purchase the centrifugal dryer flights in units of eight, whose unit prices exceeded \$250.00. Based upon this evidence which is not controverted in the record, I find these flight purchases should be entitled to the exemption. I therefore recommend that the cost of these dryer flights be removed from the tax base in calculation of the Final

Assessment, and this means all invoices assessed except for the two dated 7/18/91 and 12/31/91.

Because the remaining two invoices assessed by the Department were not produced by taxpayer and because no other documentary evidence from taxpayer's records was submitted regarding them, I recommend they remain in the tax base for the Final Assessment.

As I have reached a conclusion in favor of taxpayer on all the transactions supported by documentary evidence, I need not consider taxpayer's alternative arguments that the dryer flights qualify for the pollution control or manufacturing equipment exemptions.

In summary, I find that the tax on the centrifugal dryer flights should be removed and the remaining liability as shown in the adjusted liability schedule (Dept. Ex. No. 2) should stand.

RECOMMENDATION

Based upon my findings and conclusions as stated above, I recommend the Department reduce NTL XXXXX and issue a Final Assessment.

Karl W. Betz,
Administrative Law Judge